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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

GEORGE LUSTER,

 Petitioner,

 v.

JERRY HOWELL, et al.,

 Respondents.

Case No. 2:18-cv-01213-GMN-PAL

ORDER

Petitioner has submitted two applications to proceed in forma pauperis, a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254, and the filing fee of \$5.00. The applications are moot because petitioner has paid the filing fee. The court has reviewed the petition under Rule 4 of the Rules Governing Section 2254 Cases in the United States District Courts. The court dismisses the petition because it is successive.

Petitioner is in custody pursuant to a judgment of conviction of the Eighth Judicial District Court of the State of Nevada, Case No. 95C132314. Petitioner challenged his custody pursuant to the same judgment of conviction in Luster v. Director, Nevada Dep't of Corrections, Case No. 2:04-cv-00334-APG-NJK. Petitioner must first obtain authorization from the court of appeals before he can proceed in this court. 28 U.S.C. § 2244(b). Petitioner has not obtained that authorization. The court dismisses the action.

1 Attempting to bypass the successive-petition bar, petitioner states that he “is not
2 challenging his ‘conviction’ but the state’s denial of Luster’s ‘properly filed’ collateral review
3 ‘motion to correct illegal sentence’ which can be corrected at any time per Nevada Revised
4 Statutes [NRS] 176.555.” ECF No. 1-1, at 2. Petitioner’s argument is incorrect. 28 U.S.C.
5 § 2254(a) governs when a person challenges the validity of his custody under a state judgment of
6 conviction, not merely the validity of the judgment of conviction itself. A claim that the state
7 court erred in its denial of the motion to correct an illegal sentence is a claim that petitioner’s
8 custody is invalid. This action is governed by § 2254 and § 2244(b).

9 Reasonable jurists would not find the court’s conclusions to be debatable or wrong, and
10 the court will not issue a certificate of appealability.

11 IT THEREFORE IS ORDERED that petitioner’s applications to proceed in forma
12 pauperis (ECF No. 1, ECF No. 3) are **DENIED** as moot.

13 IT FURTHER IS ORDERED that the clerk of the court file the petition for a writ of
14 habeas corpus.

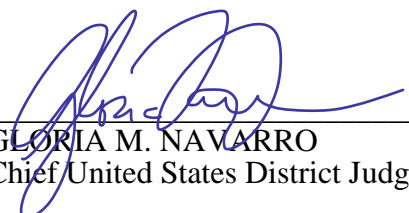
15 IT FURTHER IS ORDERED that this action is **DISMISSED** because it is an
16 unauthorized second or successive petition under 28 U.S.C. § 2244(b). The clerk of the court
17 shall enter judgment accordingly and close this action.

18 IT FURTHER IS ORDERED that a certificate of appealability will not issue.

19 IT FURTHER IS ORDERED that that the clerk shall add Adam Paul Laxalt, Attorney
20 General for the State of Nevada, as counsel for respondents.

21 IT FURTHER IS ORDERED that the clerk shall electronically serve upon respondents a
22 copy of this order. No response is necessary.

23 DATED: November 13, 2018

24 
25 GLORIA M. NAVARRO
26 Chief United States District Judge
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